IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO,2789 OF 2005

IN

SUIT NO.1844 OF 1995

...

Bank of India ...Plaintiffs

v/s.

Sabina Silk Mills & ors. ...Defendants

...

Mr.Vicky Singh i/b Mahimtura & Co. for the Plaintiffs.

Mr.Niranjan Vaghela i/b Pandya & Co. for Defendants Nos.1 & 2.

...

CORAM: D.K.DESHMUKH, J.

DATED: 25TH APRIL,2007

P.C.:

1. This Notice of Motion has been taken out by the Defendants pursuant to the liberty which according to the Defendant No.1 has been granted to him by the ad-interim order dated 20-10-1993 passed in Suit No.1844 of 1999.

2. By that order the court receiver was appointed as receiver of the property of the first Defendant. The occupant was directed to pay amount of royalty to the Bank directly. It was mentioned that the first Defendant shall pay the amount of royalty per month till the first Defendant's entire liability to the Plaintiff is paid off. The first Defendant stopped paying the royalty from the year 1998 and he has taken out this Notice of Motion for a declaration that the outstanding dues claimed by the Plaintiff from the first Defendant are fully paid. He is also seeking directions to the receiver not to dispossess the first Defendant or his representative. The direction is also sought to the Plaintiff to furnish a detailed statement of account. Perusal of the

plaint shows that the suit was filed for recovery of two amounts, i.e. (i) Rs.2,90,932.57 and the (ii) amount of Rs.3,62,584/-. Both amounts were due on 16th May, 1995 with interest at the rate of 15% p.a. with quarterly rest. The total amount of royalty paid by the Defendant No.1 to the Bank is Rs.4,90,000/-. Even according to the Plaintiff, no other payment except the amount of Rs.10,000/- and odd has been paid by the Defendant No.1 to the Plaintiff. The learned Counsel appearing for the Plaintiff has produced before me the statement of account which shows that calculating the interest on the principal amount at the agreed rate with quarterly rest, the total amount recoverable as on 31st October, 2006 comes to Rs.27,72,534/- and the amount of royalty that is recovered is Rs.4,90,000/-, leaving the balance amount of Rs.22,82,534/-. It is obvious from the order passed by the court that in the suit filed by the Bank the receiver was appointed on the property which was mortgaged by the Defendant No.1 to secure the interest of the Plaintiff/bank and royalty was directed to be paid to the bank so that bank can recover the amount that is due to the bank from the Defendant No.1. Therefore, there is no question of either removing the Receiver or issuing

any directions to the Receiver till the court is satisfied that entire dues recoverable by the Bank have been paid off. What is surprising is that the Defendant No.1, who has taken out this Notice of Motion, has not yet filed his written statement. One more aspect, in my opinion, that requires to be noted is that the Defendant No.1 claims that the dues of the Bank have been paid off according to him. But he does not give any calculation. The Bank has produced on record the document which incorporates the contract between the parties and which also provides for the rate of interest.

3. Taking overall view of the matter, therefore, in my opinion, it is obvious that this is a frivolous Notice of Motion. It is disposed of.

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